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OF
THE MERCHANTS
OF THE
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IN THE
STATE OF MASSACHUSETTS.

FEBRUARY 3, 1806.

Referred to the committee of the whole House, on the
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MEMORIAL.



To the president of the United States, and the senate and house of representatives of the United States of America, in congress assembled.

THE subscribers, a committee of the merchants of the town of Boston, duly empowered for the purpose, respectfully ask leave to address the government on a subject highly interesting to the commerce and prosperity of the United States, and involving in its results a great pecuniary property, acquired, as they believe, by honest exertions in the prosecution of an open, fair, and authorized trade.

While your memorialists have witnessed, with mingled feelings of indignation towards the perpetrators, and of commiseration for their unfortunate countrymen, the insults and barbarities which the commerce of these states has sustained from the cruisers of France and Spain, it is their object, in the present memorial, to confine their animadversions to the more alarming, because more numerous, and extensive detentions and condemnations of American vessels, by Great Britain; and to advert to the principles recently avowed and adopted by her courts, relative to neutral trade in articles of colonial produce :—principles which, if admitted, or practised upon in all the latitude which may fairly be inferred to be intended, would be destructive of the navigation, and radically impair the most lucrative commerce of our country.

The law of nations, like all other laws not formed by express compact, must, to give it an obligatory force, be founded on the rule of right, and be construed to exist only from open declaration, or from a tacit acquiescence under its operation, by the parties interested in it.

It is a law which can never be considered as absolutely permanent; for being established by common consent, for the general good, it can only be supported so long as it produces the effect intended. And so various are the changes in the political world, from the relative situation of states at different epochs, and from the growth of new empires, that it may very possibly happen, that what promoted the public welfare at one time, and therefrom became part of the law of nations, might, at another period, tend only to the aggrandizement of an individual nation, at the expense, and to the depression and injury of many other nations. In such case, it is but reasonable to expect, that old principles, even if they had been once expressly admitted, would become obsolete, or be newly modified, and made to conform to a state of nations widely different from that in which they originated. At any rate, your memorialists presume it can never be justly contended, that principles of maritime law have been admitted by a nation, during whose existence they had never been avowed nor acted upon, merely because such nation did not anticipate and combat pretensions which it never imagined would be seriously advocated: principles that had been virtually abandoned subsequently to their first avowal, even during an intermediate and inveterate war, and during the prosecution of a trade which is now interdicted, and alleged to be illegal, but which trade was, at that time, sanctioned by the promulgated decisions of her courts, and by an official communication from one of the highest organs of the very government which is now attempting to destroy it, and, with its suppression, to annihilate, or greatly diminish, the commerce of neutral nations.

From the decree of the lords of appeal, in the case of the *Essex*, Orne ; from the judgment of sir William Scott, in several other cases, since that decree, in direct contravention of his former decisions ; from the multiplied arrestations and detentions of American vessels, of which every arrival furnishes a more extended list ; there is great cause to apprehend, that the British government mean to set up as principle, *that she has a right to interdict all commerce, by neutrals, to the ports of her enemies, which ports had not been opened previously to the commencement of hostilities ; that if she permits a trade with them, in any degree, she has a right to prescribe the limits of it ; to investigate the intention of the parties prosecuting it ; and if such intention be not the actual disposition of the property in the neutral country, to consider the merchandise, even after the importation into such country, after having been landed therein, warehoused, and the duties paid on it, as only in the stage of a continued and direct voyage from the colony to the mother country, or vice versa, and therefore illegal, and liable to condemnation.*

Speculating upon the apparent avowal of these principles, the vice admiralty judges of Great Britain, the officers of her ships of war and cruisers, seem to consider them as the signal for harassing and arresting neutral commerce, and vigilantly acting in conformity with these impressions. We find, that scarcely an American vessel can pass the Bahamas, the straits of Gibraltar, or the English channel, without being seized, in some cases condemned, and in others released, either without damages, or with the conviction that the demand for compensation would be attended with greater expense than would be defrayed by a successful pursuit of it.

In some instances, your memorialists find new vessels, on their first passage from the United States to Europe, arrested, carried out of their course, and injuriously detained under the vexatious pretence of a continuity of voyage from the country or colony of a belligerent.

In another instance they have witnessed a vessel captured and condemned under the most frivolous pretext, when in the prosecution of an acknowledged and permitted trade, under circumstances which banished every shadow of doubt as to the real destination of the vessel, the identity of the owners, or the actual intentions of the parties.

Your memorialist allude to the case of the *Indus*, Myrick, which vessel was owned by gentlemen of this town, not engaged in commission business; possessing very abundant capital to undertake large and distant enterprizes, and the fairness of whose intentions or conduct has never been questioned or suspected.

The *Indus* proceeded from Boston to Batavia, there purchased a cargo, and, on the return therewith to Boston, was dismasted, and, after suffering severely from the elements, obliged to put into the Mauritius. On her arrival there, the ship was found too much injured to prosecute the voyage, was condemned as not sea-worthy, and sold. The captain not being able satisfactorily to dispose, at the isle of France, of that part of the cargo which remained, after defraying the expenses, purchased another vessel, gave her the same name, put on board the residue of his original cargo, and completed his loading with freight belonging to citizens of this town. With this remnant, saved from his misfortunes, he proceeded on the voyage, and had nearly reached the mouth of our harbour, when his vessel was captured by a British cruiser, carried into Halifax, and there, by the vice admiralty court, condemned; because among the papers was found a memorandum, reminding the captain, after his arrival within the harbour of Boston, to insert, in the manifest to be delivered at the custom-house, that the ship was bound "for Boston and Embden:" a provision merely intended to operate in case of the restoration of peace before the return of the vessel, and which, as the laws of the United States were, when she departed from

Boston, was needful to enable her to proceed to Europe without unloading the cargo, or the payment of duties; and which provision, the captain must have been well convinced, was rendered holy nugatory with the second ship; because when he left the United States, he knew, that if any part of a cargo were entered, the whole must be landed; and having taken freight which he was obliged to deliver here, there no longer remained an election respecting the termination of the voyage, and that it must of necessity be concluded at Boston.

The precautionary memorandum to insert in the manifest, after the arrival of the vessel in our harbour, the words "Boston and Embden," was practised at the time, for the same purpose, by many of our most correct and intelligent merchants, and is no evidence of an intention to avail of the permission which it gave to proceed to Europe. In the case of the *Indus*, the owners have disavowed, most formally, under the existing political state of Europe, any intention of continuing the voyage; and this asseveration is corroborated by the strongest collateral evidence it is possible to adduce: the same orders having been given in previous enterprizes, in none of which had the permission been availed of: but in every case, in which they were interested, the cargoes had been actually landed and sold in the United States, notwithstanding a similar declaration in the manifests.

In another case, your memorialists learn, that a vessel (the *Aurora*, Hall,) belonging to Portsmouth, in New-Hampshire, after having carried out a cargo of innocent merchandise, the property of natives and merchants of this town, to the neutral port of Leghorn, ordered from thence with specie to Calcutta, and from thence to return with a cargo to this place, has been arrested in the progress of the voyage, carried into Gibraltar, and may probably be condemned; because her outward cargo consisted of

colonial produce, and because the captain was permitted, by his orders, to stop at the isle of France, on his voyage to Calcutta, and to avail of the state of the markets there, should they be favourable to procure a return cargo for Boston ; thus embarrassing a trade which, whether prosecuted to the one place or the other, has, by all parties, been considered as open, and extending the taint of a cargo of colonial produce, further than by most nations is attached to a loading of articles wholly contraband of war ; for it is admitted by them, even in that case, that the offence is deposited with the cargo, and ceases on its delivery.

Your memorialists will not proceed to fatigue the attention of government, by citing cases, which, they presume, so soon as regular documents can be obtained, will be transmitted in precise statements to the department of state. These few instances they have thought it needful to notice, in order to demonstrate, that unless the present disposition of the British admiralty courts and navy officers, can be counteracted and removed, a widely dispersed and unprotected commerce, extending to every region of the globe, will only serve to invite depredation, to bankrupt ourselves, and enrich others ; until such commerce be swept from the face of the ocean, and leave nothing in its stead, but sentiments of hostility and acts of contention.

Without entering into elaborate disquisitions, your memorialists request permission to make a few remarks on what they conceive to be the principles assumed by Great Britain.

1st. It is contended by Great Britain, that she has the right to interdict entirely a trade by neutrals to the ports of her enemies, such ports not having been open to them in time of peace ; and that having the right to interdict this trade altogether, she has, *a fortiori*, the right to modify it as she pleases ; and of consequence, if an enemy nation should remain in a state of war for half a century, any alteration of her

colonial system, which, very probably, the progress of events might have produced in time of peace, shall not be permitted to her, even should there have taken place, during that time, a total and acknowledged revolution of her government, and an abolition of all her ancient systems.

2ndly. That having allowed a direct trade between the colonies of her enemies and neutral countries, she has a right to say, that such trade shall cease and determine in the neutral state ; and that, to prevent its further progress, she has the right to examine, in all cases, to whom property found on the ocean belongs ; to trace the evidences of a continuity of trade ; to investigate the latent intentions of neutral merchants ; to discriminate between importers and exporters ; and then to accord to one part of a community what she denies to another part.

A tacit submission to pretensions thus lofty and comprehensive, but which your memorialists trust are most of them untenable, would, they conceive, be an abandonment of rights openly recognized, and a dereliction of the most important commercial interests of our country.

Reason and the most powerful considerations of equity enjoin it as a duty on the United States to oppose these pretensions ; for circumstanced as these States are, possessing an immensely extended and fertile territory, producing mostly the necessaries of life, which, with the merchandize obtained from abroad by the industry and enterprize of her citizens, she is obliged to barter, or furnish in payment for importations of foreign produce or manufactures ; it behoves her, strenuously to contend for the right of an open commerce, in innocent articles, between other nations, that are willing to accord it, and herself : for if the right be not both claimed and admitted, scarcely any of the European powers can, in future, be engaged in warfare, without making the United States, in opposition both to her efforts and wishes,

either a victim or a party in the contest. For it is well known that the trade of this country with nearly all the colonies of European powers, is carried on by occasional permissions, and by partial relaxations of the prohibitory system ; and if the British contend, that the port of Batavia shall not be opened to neutrals in time of war, because it has ordinarily been closed against them in periods of peace ; that the temporary permission to trade there, was extorted merely by the pressure of the maritime superiority of Great Britain ; and that to relieve this pressure, by the purchase of Javanese produce, was counteracting the effect of her arms, and giving aid to her enemies in the war ; it might with equal force, by parity of reasoning, be contended by France, or any other nation at war with Great Britain, that the limited permission given to the United States to trade at Jamaica, in articles of the first necessity, was evidently granted with reluctance, and was extorted by the power of their arms on the continent of Europe ; that to oppose and counterbalance these, Great Britain was necessitated to victual and man immense fleets, and to organize and support numerous armies ; that to provision these fleets, and provide for these armies, consumed all the produce of her country ; that not having any articles of subsistence to spare, she must therefore either abandon her colonies to famine, or reduce or distress her armaments, by diverting from them part of the supplies destined to their support ; and that for the citizens of the United States to step in, and avail of even a six weeks permission to supply her colonies, and thus prevent their falling an easy prey into the arms of France, from the pressure of their own necessities, was actually giving aid, and comfort, and existence to the enemy of France ; was in effect making a common cause with her, and of course rendered the vessels of the United States, when captured in the prosecution of such trade, lawful prizes to the cruisers of France. Thus

your memorialists conceive these pretensions afford constant sources of collision, continually tending to involve these states in the issue of European wars, and would oblige the government, on the occurrence of such wars, speedily to unite with one or other of the parties, in order that the commerce of the country might lawfully avail itself of some degree of security, from the protection which its own force and that of its allies could afford.

To this state of things your memorialists believe it can neither be the interest nor wish of the British government to reduce our country.

The right of internal commercial regulation, in articles of an innoxious nature, is one of the essential and inherent rights of every independent sovereignty ; and with the exception of a trade to blockaded ports, or in articles contraband of war, every government has a right to sell the surplus articles of its manufactures and produce to neutral merchants, who, on their part, so long as they confine themselves to a fair and honorable course of dealing, purchasing exclusively for their own account, and refusing to cover the property of a belligerent, are entitled to the protection of their own, and the respect of other governments ; for the most tenacious advocates for the rights of belligerents admit, that during war, neutrals have a right to enjoy, in the utmost latitude, the trade to which they had been accustomed in time of peace. Now if a belligerent has the right to blockade an extended sea coast, and to exclude neutrals from perhaps fifty different ports (as was the case with the French ports in the channel during the last war) how can the neutral enjoy his usual peace-trade, in its greatest latitude, unless this deprivation is balanced by another trade which is opened to him during the war?

As to the inquisitorial right of search into the ownership of neutral property, set up by Great Britain, and the doctrine appended to it, that a neutral importer shall not again export his goods, but that they

shall be first alienated and passed into the possession of others ; your memorialists believe them to be unsound in point of principle, offensive in practice, and nugatory in effect. For the importation of merchandise into a neutral country, landing it, payment of duties on it, and exposing it for sale, as fully domesticates such merchandise, and makes it as much a part of the marketable stock of the country, as the corn which is raised in its fields, or the beef that is fatted on its mountains; and thence forward, it becomes as much the right of one citizen as of another to export, or appropriate it, as he chuses ; and the attempt by another government subsequently to discriminate, and to deprive a neutral merchant of the right to purchase a cargo for exportation, because possibly he owned a fiftieth part of it on importation, can only excite irritation, invite collusion, lead to fictitious sales, and eventually would diminish in a very small, if in any degree, shipments of foreign produce.

This doctrine is probably more injurious in its operation to the United States than to any other country. Second to no nation on earth in enterprize, her citizens are yet inferior to those of many other countries in capital ; hence arises the necessity of numerous associations in the prosecution of distant enterprizes ; and to exclude all the original associates from the right of any subsequent trade, in articles derived from adventures in which they had been concerned, to perhaps a very small amount, and which adventures, after the arrival in the United States, are as much terminated, so far as respects a continuity of association, as if the property had been sunk in the ocean ; and thus to throw advantages into the laps of their neighbours, from the participation of which they are interdicted, is manifestly arbitrary and unjust.

Your memorialists would with reluctance believe that the sacred tribunals of justice have become subservient to motives of political expediency ; more especially in a nation whose judicial proceedings have fre-

quently deserved and commanded the respect of all civilized countries; yet they know not, easily, how to reconcile, on any other ground, the contradictory proceedings of the British admiralty courts during the last and present war.

In February, 1800, there came on for final adjudication, before the high court of admiralty in Great Britain, the case of the *Polly*, Laskey. This was a vessel bound from Marblehead to Bilboa, captured, and carried into England, because she had on board two hundred and forty-nine boxes of Havanna sugars, and thirty hogsheads of Caraccas cocoa, the produce of Spanish colonies, and was brought to trial, principally under the pretence, that, as she was carrying those articles to a port of Spain, the trade was, in effect, a direct one between the colony and the mother country, and therefore illegal, and subjecting the property to condemnation.

The *Polly* was owned by a merchant of Marblehead, who, in his attestation, declared, that he had been in habits of trading both with old Spain and with the Havanna. In evidence, on the trial, it appeared, that the *Polly*, on a previous voyage, had been to Bilboa; that she took from thence bills of exchange on the Havanna; that with these bills, she, in part, paid for the identical sugars which were found on board of her at the time of capture; that for the residue of the purchase, bills were drawn from the Havanna on the house in Bilboa, who did the business of the vessel on her former voyage; and by the certificate of the collector of the customs at Marblehead it appeared, that the sugar had been imported from the Havanna on board the *Polly* in June, and exported by her to Bilboa in August, the intermediate time being employed in repairing the vessel, and preparing her for the voyage. It also appeared by the deposition of the mate, that the captain had destroyed some of his papers.

A case more pertinent to the question at issue, or more strongly marked, could scarcely be imagined by the strongest powers of invention.

For the captors there appeared the king's advocate (undoubtedly one of the ablest jurists in the nation) and Mr. Arnold. In delivering its judgment, the court asked, whether it was contended, that an American could not purchase articles of this nature, and import them bona fide to America on his own account, and afterwards export them? It was answered, no. The court then stated, that an American has undoubtedly a right to import the produce of the Spanish colonies for his own use, and after it is imported bona fide into his own country, he would be at liberty to carry them on to the general commerce of Europe. The vessel and cargo were restored to the neutral claimants.

In 1801, in consequence of a decree of the vice-admiralty court at Nassau, condemning the cargo of an American vessel going from the United States to a port in the Spanish colonies, with a cargo consisting of articles the growth of Old Spain; our highly respectable and able minister at the court of London, immediately addressed lord Hawkesbury, his majesty's secretary for foreign affairs, and remonstrated in a respectful, but firm and dignified manner, against this infringement and violation of the rights of neutrals. The remonstrance met that prompt attention from the British government which its merits demanded: the subject was referred to the consideration of the advocate general, who reported, that the sentence of the vice-admiralty court at Nassau, was founded in error; that it was now (1801) distinctly understood, and had been repeatedly so decided by the high court of appeals, that the produce of the colonies of the enemy may be imported by a neutral into his own country, and may be re-exported from thence even to the mother country of such colony; and in like manner, the produce and manufactures of the mother country, may, in this circuitous route, *legally* find their way to the colonies; that a direct trade had not been recognized as legal, and the decision of what was, or was

not, a direct trade, was a question of some difficulty ; but that the high court of admiralty had expressly decided, and the advocate general saw no reason to expect the court of appeals would vary the rule, that landing the goods and paying the duties, in the neutral country, breaks the continuity of the voyage, and is such an importation as *legalizes* the trade, although the goods be re-shipped in the same vessel, and on account of the same neutral proprietors, and forwarded for sale to the mother country.

The report of the advocate general was accepted by the British government, immediately transmitted by lord Hawkesbury to Mr. King, and, by his majesty's express command, communicated by the duke of Portland, the principal secretary of state, to the lords commissioners of the admiralty, with the information, that it was his majesty's pleasure, that the doctrine laid down in the advocate general's report, should be immediately made known to the several judges of the vice-admiralty courts, setting forth to them what is held to be *law* upon the subject, by the superior tribunals, for their future guidance and direction.

Thus are obtained so recently as within five years, the deliberate opinions on the subject under discussion, of the most eminent English civilians, and of the high court of admiralty, corroborated (if one of the first law officers of the crown may be credited) by the repeated decisions of the same court of appeals, which by its late, and contradictory decree, in the case of the *Essex*, Orne, has caused so disastrous an arrestation and condemnation of American property.

Judgments thus perspicuously stated, and enforced by the highest authority, it was fair to consider as intended for a beacon, to direct to the channel through which neutral commerce might be prosecuted with security. It is hoped the event will not prove they were a mere *ignis fatuus* to ensnare the innocent and unsuspecting.

At any rate, whether the doctrine were sound or not, or whether it injured Great Britain or not, it cannot become the integrity and magnanimity of a great and powerful nation at once, and without notice, to reverse her rule of conduct towards other states, and to prey upon the unprotected property of a friendly power, the extension of whose commerce had been invited by the formal avowal of her intentions, and prosecuted under a reliance on her good faith, and from the confidence reposed, that her courts, uniform in their principles, would never be influenced by the time-serving politics of the moment.

But whatever may have been the motives for the proceedings on the part of Great Britain, the effect is notorious. From her recent conduct great losses have been sustained; our commerce has been checked and embarrassed, and large quantities of produce are now remaining locked up in this country, which were purchased for foreign markets; because our merchants cannot send it abroad, without taking risks on themselves which prudence would not justify, or without paying such rates for insurance as the trade of the country cannot afford.

Thus circumstanced, the merchants of Boston have thought it their duty respectfully to make known their complaints to the government. Believing the citizens of the United States desirous of cultivating relations of amity with the whole human race; and particularly connected as they are with Great Britain, by habits of constant intercourse and by mutual wants, they cannot but hope, that like dispositions are entertained by the British nation towards this country, and if measures were speedily taken for the amicable discussion, by negotiation, of our complaints, that a sense of her own interest, and a respect for the rights of others, would induce her to depart from her present measures, and to conduct towards us with justice and liberality.

Under this persuasion, and without meaning in the smallest degree to derogate from the talents or attention of the American minister at the court of London, the subscribers, with deference and humility, beg leave to suggest, whether, when so important national interests are at stake, a special mission would not carry with it great influence, and be very instrumental in the accomplishment of our reasonable wishes.

In all events, fully relying that the subject of our difference with Great Britain will receive the due consideration of government, and that such measures will, in consequence, be promptly adopted, as will tend to disembarass our commerce, assert our rights, and support the dignity of the United States,

Your memorialists have the honor to remain,

In behalf of their constituents and themselves,

Most respectfully,

JAMES LLOYD, jun.
JOHN C. JONES,
DAVID GREENE,
GEORGE CABOT,
ARNOLD WELLES,
T. H. PERKINS,
D. SEARS.

Attest,

ISAAC WINSLOW, jun. Secretary.

Boston, January 20, 1806.

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